



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

Re: 71775, 73444, and 73574

March 29, 2006

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Ladies and Gentlemen:

Application 71775 was filed on October 15, 2004, by the Nevada Waterfowl Association to change the place of use of a portion of the water previously appropriated under Claim No. 3, *United States v. Orr Ditch Water Co.* and *U.S. v. Alpine Land and Reservoir Co.* The Application proposes to change the place of use of 6.58 acre-feet (1.88 acres x 3.5 acre-feet per acre) of the waters of the Truckee and Carson Rivers from the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T.19N., R.28E., M.D.B.&M. to Carson Lake. Application 71775 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

Application 73444 was filed on November 7, 2005, by the State of Nevada Department of Wildlife to change the place of use of a portion of the water previously appropriated under Claim No. 3, *United States v. Orr Ditch Water Co.* and *U.S. v. Alpine Land and Reservoir Co.* The Application proposes to change the place of use of 38.10 acre-feet (74.70 acres x 0.51 acre-feet per acre) of the waters of the Truckee and Carson Rivers from the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T.17N., R.29E., M.D.B.&M. to Carson Lake. Application 73444 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

Application 73574 was filed on December 12, 2005, by the Nevada Waterfowl Association to change the place of use of a portion of the water previously appropriated under Claim No. 3, *United States v. Orr Ditch Water Co.* and *U.S. v. Alpine Land and Reservoir Co.* The Application proposes to change the place of use of 19.25 acre-feet (5.50 acres x 3.5 acre-feet per acre) of the waters of the Truckee and Carson Rivers from the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T.19N., R.28E., M.D.B.&M. to Carson Lake. Application 73574 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

The Pyramid Lake Paiute Tribe's protest alleges that:

1. The application is defective because it does not seek to change the manner of use from as decreed for irrigation to recreation, wildlife, and/or the maintenance and preservation of wetlands;
2. Under the Administrative Provision VII of the *Alpine Decree*, the change in the manner of use from irrigation to an other use is limited to the net consumptive use of the water right sought to be changed which, in this case, is a maximum of 2.99 acre-feet per acre, as opposed to the 3.5 acre-feet per acre sought in the application;
3. The Applicant does not own or have an ownership interest in the proposed place of use and does not have the authority, or the consent of the landowner, to deliver the full maximum water duty of 3.5 acre-feet per acre to the proposed place of use;

4. The State Engineer should not act on the applications because the Governor and other officials of the State of Nevada have taken a position in favor of the Applicant on the issues raised in the Tribe's protest and the State of Nevada, has, at a minimum, the appearance of a conflict of interest owing to several significant interests of the State of Nevada, including, but not limited to, its ownership of a substantial quantity of water rights whose value would be enhanced by granting the application, its ownership and operation of a state park at Lahontan Reservoir and its anticipated ownership of the proposed place of use at Carson Lake;

5. The State Engineer should refer the issue described above in the first and second grounds of protest to the *Alpine* Court in the first instance to decide whether the proposed use of water at Carson Lake is a change to use other than irrigation.

6. Approval of the application with the proposed water duty of 3.5 acre-feet per acre would increase diversions of Truckee River water to the Newlands Project and would therefore be inconsistent with the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, Public Law 101-618; and

7. Approval of the application would threaten to prove detrimental to the public interest.

The United States Department of Interior, Bureau of Reclamation protested the application on the grounds that:

1. The Applicant has failed to establish that it has any legal interest in the water rights to be transferred;

2. The *Alpine* Decree for the Carson River appears to limit the proposed transfer to the consumptive use amount only;

3. The Applicant has not provided any evidence of ownership interest in the land to which the water rights are proposed to be transferred and the Protestant is not aware of any such interest;

4. Because the Applicant does not appear to have any ownership interest or access rights to the land to which the water rights are proposed to be transferred to, the Applicant is not able to put the transferred water to beneficial use;

5. If the proposed transfer is granted by the State Engineer, such transfer, or at least any amount above the consumptive use portion, cannot be effective until affirmed by a court order that is final and nonappealable;

6. The State Engineer is constrained in his authority to act on this transfer by the Agreement for the Transfer and Management of Carson Lake and Pasture to which the State of Nevada is a party; and

7. Approval of the proposed transfer would be inconsistent with the Truckee-Carson Pyramid Lake Water Rights Settlement Act of 1990, Title II of Public Law 101-618.

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Many of the protest issues raise questions of law; therefore, the State Engineer is ordering pre-hearing briefing on the following issues raised in the Tribe's protest – Nos. 1, 3, 4 and 5 and raised in the Bureau's protest – Nos. 5, 6 and 7. Any party is free to address any other issue they believe can be addressed in the briefing. Accordingly, **the parties are hereby ordered to serve on each other and file in the Office of the State Engineer opening briefs by Monday, October 16, 2006, and reply briefs are to be served and filed by Monday, November 6, 2006.**

Accordingly, the hearing will begin promptly at **9:00 a.m., on Tuesday, November 14, 2006, continuing through Wednesday, November 15, 2006, if necessary, to be held in the Division of Water Resources' Hearing Room, 901 South Stewart Street, Second Floor, Carson City, Nevada.** The Bureau of Reclamation will present its case first followed by the Pyramid Lake Paiute Tribe. The Applicant will present its case last. **The parties are hereby ordered to serve on each other and the State Engineer no later than Monday, October 23, 2006, a list of witnesses, a detailed summary of the testimony of each witness, and copies of any documentary evidence intended to be introduced into evidence at the administrative hearing.**

As provided in NAC § 533.220, the hearing will be reported by a certified court reporter. An original and one copy of the transcript of the proceedings must be filed with the State Engineer. The Applicant and Protestants will bear equally the court reporter's appearance fee, travel expenses, reporting and transcribing the portion of the transcript consisting of comments by the State Engineer and the public. The Applicant and Protestants shall bear pro rata the cost of the portion of the transcript taken up by their own case. Nevada Administrative Code § 533.290 requires that exhibits introduced into evidence must be in a readily reproducible form, on paper that is 8½ x 11" or foldable to that size. Larger charts, maps, drawings and other material will not be admitted into evidence, but may be used for demonstrative purposes. An original and one copy of each exhibit must be submitted to the State Engineer. Facilities are not available for copying documents during the hearing.

You or your designated representative should plan to attend the hearing for the purpose of presenting evidence or testimony in support of your position concerning the protested applications. Legal counsel not licensed to practice law in the State of Nevada or licensed, but not maintaining an office in the State of Nevada, is required to comply with Supreme Court Rules 42 and 42.1. The Verified Application to Associate form that needs to be filed with the Nevada State Bar can be found on the Nevada Division of Water Resources website found at www.water.nv.gov. Forms Room - Miscellaneous Forms. Nevada Supreme Court Rule 43 provides an exception for lawyers employed by or representing the United States Government.

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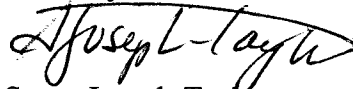
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We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me at the Nevada Division of Water Resources, 901 South Stewart, Second Floor, Carson City, Nevada, 89701, or by calling (775) 684-2800.

If you have any questions on this matter, feel free to call me.

Sincerely,



Susan Joseph-Taylor
Chief, Hearings Section

SJT/jm

cc: Barry Fitzpatrick, Fallon, regular mail
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Marty Kaiser, Bureau of Reclamation, regular mail
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